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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/657,476

09/08/2003

Anthony Sanding

UTL 00072

2679

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KYOCERA WIRELESS CORP.

P.O. BOX 928289

SAN DIEGO, CA 92192-8289

EXAMINER

SHEDRICK, CHARLES TERRELL

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

05/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/657,476

Applicant(s)

SANDING, ANTHONY

Examiner

Charles Shedrick

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 4/20/07 have been fully considered but they are not persuasive.

Based on the Applicants arguments and previous discussions during interviews it appears that the question remains rather Criss or the prior art teaches an end of session indicator sent by he network or fails to detect an end of session indicator and finally who initiates the over the air programming call and programming session. Regarding the end of session indicator, A careful Examination of the specification in order to get a better understanding as to what would encompass an end of session indicator it appears that what is meant is an end of session indication can be a transition from one network (digital) to another (analog). An end of session indicator can be the receipt of a message. During an interview initiated by the Examiner the Applicant indicated an end of session indicator can be a number of things given a broad interpretation. Based on the combination of the Applicants specification and the Interview discussion the Examiner is unable to distinguish the claimed invention over the prior art in terms of receiving an end of session indicator received by the network. Crisp teaches using FTP which runs over TCP and teaches a number of end of session indicators inherently built into the protocol which are expected and not necessarily requested (e.g., file size indicators and see TCP connection close – i.e., I have no more data to send).

Regarding who or what initiates the call and the programming session. A careful examination of Criss indicates that the mobile or the Network can do the above. Paragraph 0102 teaches that he Mobile or Network may initiate the SW upgrade at some point following the boot-up routine.

Paragraph 0051 teaches that the Host computer transmits a request to the mobile terminal to have

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the mobile terminal SW upgraded. Furthermore, if the initiation of the programming call or the programming session is being relied upon for novelty this would appear to be somewhat of a contradiction since in paragraph 0005 of the Applicants specification outlines that prior art teaches mobile subscriber unit initiates the call, in Paragraph 0006 Applicants specification outlines that prior art teaches that the programming can be network or user initiated. Lastly, as discussed during the interview Criss teaches a timer used for terminating the programming session. For example Criss is configured to detect the end of session indicator sent by the network such as TCP closed connection, FTP 226 and 426 response codes. The response codes are not necessarily requested, but indicators in response to a particular condition (e.g., bad connection). If the expected termination of the programming call by the network is not detected (i.e., the routine gets hung), the mobile unit can terminate the routine.

Therefore, at this time based on the above interpretation and the prior art disclosure the rejection is maintained as proper. The Examiner respectfully thanks the Applicant for the Examiner initiated interview. If the Applicant believes that above interpretations are unclear or misguided it is respectfully noted that the Applicant clearly point of the distinctions as precise as possible in the claim language and/or remarks.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Shedrick whose telephone number is (571)-272-8621.

The examiner can normally be reached on Monday thru Friday 8:00AM-4:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kincaid Lester can be reached on (571)-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles Shedrick
AU 2617
May 14, 2007


LESTER G. KINCAID
SUPERVISORY PRIMARY EXAMINER